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NO. 80-1597

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GEORGE N. CAMPBELL, JR.
COMMISSIONER OF TRANSPORTATION
STATE OF MAINE

Appellant

v.

JOHN DONNELLY & SONS,
NATIONAL ADVERTISING COMPANY
AND WILLIAM S. SCHAEFFER

Appellees

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

MOTION TO AFFIRM

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May 1, 1981

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Statutes:

Maine Traveler Information Services Act, 23 M.R.S.A. § 1901, *et seq.* 2

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Motion to Affirm

Appellees[1] move that the judgment of the United States Court of Appeals for the First Circuit sought to be reviewed in this appeal be affirmed on the ground that it is manifest that the questions on which the decision of the cause depends are so insubstantial as not to need further argument.

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[1]Pursuant to Rule 28.1 of the Rules of the Supreme Court of the United States, appellees provide the following information:

National Advertising Company is a wholly owned subsidiary of its parent company, Minnesota Mining and Manufacturing Company. All other United States subsidiaries of Minnesota Mining and Manufacturing Company are wholly owned except Eastern Heights State Bank (St. Paul, Minnesota) which is 99% owned by the parent company.

John Donnelly & Sons has no parent company, subsidiaries or affiliates..

Argument

As alluded to in the appellant's Jurisdictional Statement (J.S. at 5), the issues considered by the lower courts in this case — *viz*: (1) whether the statewide abolition of an entire, unique, mode or medium of mass communication violates constitutional guarantees of freedom of speech and press, and (2) whether the statewide elimination and prohibition of the longstanding, legitimate business of outdoor advertising goes beyond the police powers of a state in violation of the due process clause — are essentially identical to those issues presented to this Court in the appeal from the ruling of the California Supreme Court in *Metromedia, Inc. v. City of San Diego*, 26 Cal. 3d 848, 610 P.2d 407, 164 Cal. Rptr. 510 (1980), *prob. juris. noted*, 49 U.S.L.W. 3264 (Oct. 14, 1980) (No. 80-195). Oral argument in that case was heard by this Court on February 25, 1981.

The decision of the First Circuit below[2] concluded that the Maine Traveler Information Services Act, 23 M.R.S.A. § 1901, *et seq.*, which completely prohibits billboards in Maine, violates the First Amendment. The judgment declaring that law to be unconstitutional is, indeed, contrary to the decision of the California Supreme Court in *Metromedia*.

Although appellees disagree with some of the *dicta* contained in the two judge majority opinion authored by Judge Aldrich, and believe that the statement of the applicable constitutional principles is articulated with greater thoroughness and precision in the concurring opinion of Judge Pettine, the judgment entered by the First Circuit declaring the Maine Act unconstitutional is undoubtedly correct, and should be affirmed by this Court.

If the decision of the Supreme Court of California in *Metromedia* is reversed by this Court, the judgment below of the First Circuit Court of Appeals holding the Maine Act unconstitutional should be summarily affirmed.

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[2]The First Circuit opinion, reprinted in the Jurisdictional Statement as Appendix A, has now been reported. *John Donnelly & Sons v. Campbell*, 639 F.2d 6 (1980).

If, however, this Court should, for any reason, affirm the ruling of the California Supreme Court, it may be on the basis of facts which differ to some extent from those in this case.[3] If that should occur appellees would respectfully request the opportunity to file a Supplemental Brief in order to address those specific differences which might affect the consideration of the proper method of dealing with this appeal.

In support of their position that this cause needs no further argument, appellees incorporate by reference the legal authorities and arguments presently before this Court supporting the position of the appellants in *Metromedia, Inc. v. City of San Diego*, U.S. Sup. Ct. No. 80-195, including: "Brief of Appellants"; "Reply Brief of Appellants"; "Brief of the Outdoor Advertising Association of America as Amicus Curiae in Support of Appellants"; "Brief of the American Civil Libierties Union *Amicus Curiae*"; "Brief Amicus Curiae of the American Newspapers Publishers Association in Support of Appellants"; "Brief of Amicus Curiae Pacific Legal Foundation in Support of Appellants"; "Brief Amici Curiae on Behalf of Appellants Metromedia, Inc., and Pacific Outdoor Advertising Co., Inc., Urging Reversal"; and "Brief in Support of Jurisdictional Statement Filed by Amici Curiae Who Rely on Outdoor Advertising to Communicate."

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[3]The record in this case consists of extremely detailed factual presentations via a Master Affidavit and 27 individual affidavits from people such as Minority Leader of the United States House of Representatives, Congressman John J. Rhodes, Principal Deputy Assistant Secretary of the Army, Manpower and Reserve Affairs, Brigadier General Paul D. Phillips, U.S.A. Ret., well known national business leaders, and individual users and consumers of outdoor advertising information. These affidavits provide an extensive factual record relating to the nature and use of outdoor advertising as a unique, distinct and independent medium of mass communication. The affidavits and the record below contain detailed information relating to more than a dozen scientific studies of the impact of outdoor advertising devices on highway safety leading to the uncontradicted conclusion that there is *no* relationship between the occurrence of traffic accidents and the presence of roadside advertising signs or billboards. The record below, like that in *Metromedia*, is totally bereft of any facts which in any way could support any other conclusion.

Conclusion

Although there is a conflict between the decision of the Court of Appeals in this case and that of the California Supreme Court in *Metromedia, Inc. v. City of San Diego, supra,* which case is currently under advisement in this Court, it would be inappropriate for this Court to note probable jurisdiction of this case at this time. This Court should affirm the judgment of the United States Court of Appeals for the First Circuit. In the event that this Court affirms the decision of the California Supreme Court in *Metromedia,* appellees respectfully request the opportunity to submit a supplemental memorandum.

Respectfully submitted,

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